

## **Virginia Stormwater Management Program (VSMP) Permit Regulations**

### **General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities (4 VAC 50-60-1100 through 4 VAC 50-60-1170) [Part XIV]**

**July 22, 2008**

#### **Technical Committee Charge**

The State Water Control Board (Department of Environmental Quality) issued the existing 5-year Construction General Permit on July 1, 2004 thus necessitating the promulgation of a new General Permit by the June 30, 2009 expiration date by the Virginia Soil and Water Conservation Board. [Program transferred to the Virginia Soil and Water Conservation Board and DCR from the State Water Control Board and DEQ effective January 29, 2005]

This TAC is charged with refining and developing where necessary, in coordination and cooperation with the Department of Conservation and Recreation (DCR) and the Environmental Protection Agency, amendments to the Virginia Soil and Water Conservation Board's Virginia Stormwater Management Program (VSMP) Definitions and Construction General Permit Regulations (Parts I and XIV) in order to have a new permit in place by July 1, 2009.

## **Framework of Stormwater Regulations**

### **VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP) PERMIT REGULATIONS [4 VAC 50-60-10 et seq.]**

Part I: Definitions, Purpose, and Applicability

Part II: Stormwater Management Program Technical Criteria

Part III: Local Programs

Part IV: Technical Criteria and Permit Application Requirements for State Projects

Part V: Reporting

Part VI: VSMP General Program Requirements Related to MS4s and Land-Disturbing Activities

Part VII: VSMP Permit Applications

Part VIII: VSMP Permit Conditions

Part IX: Public Involvement

Part X: Transfer, Modification, Revocation and Reissuance, and Termination of VSMP Permits

Part XI: Enforcement of VSMP Permits

Part XII: Miscellaneous

Part XIII: Fees

Part XIV: General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities

Part XV: General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems – Effective July 9, 2008

FORMS

In addition to this action that will amend Part XIV, we currently have stormwater actions going on that will modify Parts II (Water Quality and Quantity Technical Criteria) and III (Local Program Criteria).

We also have an ongoing action to amend stormwater fees (Part XIII).

Part I, the definitions, are updated as necessary to address issues directly related to each regulatory action.

We have just completed revisions to the MS4 General Permit that became effective on July 9, 2008.

**VIRGINIA SOIL AND WATER CONSERVATION BOARD**

**Amend the General Permit for Discharges of Stormwater from Construction Activities found  
in Part XIV**

**4VAC50-60-10. Definitions. Pages 1-23**

**4VAC50-60-1100. Definitions. Page 24**

**4VAC50-60-1110. Purpose. Page 25**

**4VAC50-60-1120. Effective date of the permit. Page 25**

**4VAC50-60-1130. Authorization to discharge. Page 25**

**4VAC50-60-1140. Qualifying state, tribal and local programs. Page 28**

**4VAC50-60-1150. Permit application (registration statement). Page 29**

**4VAC50-60-1160. Termination of permit coverage. Page 32**

**4VAC50-60-1170. General permit. Page 33**

**GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION  
ACTIVITIES**

**AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA STORMWATER  
MANAGEMENT PROGRAM AND THE VIRGINIA STORMWATER MANAGEMENT ACT**

**SECTION I Page 34**

**DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS**

**SECTION II Page 39**

**STORMWATER POLLUTION PREVENTION PLAN**

**SECTION III Page 53**

**CONDITIONS APPLICABLE TO ALL VSMP PERMITS**

**FORMS Page 65**

**DOCUMENTS INCORPORATED BY REFERENCE Page 66**

## **General Intent for this Regulatory Action**

This general permit regulates the discharge of stormwater from construction sites that disturb 1 acre or more of land (2,500 sq feet in Bay Act areas), and from smaller sites that are part of a larger, common plan of development. This permit requires operators of such construction sites to implement stormwater controls and develop stormwater pollution prevention plans (SWPPPs) to prevent sediment and other pollutants associated with construction sites from being discharged in stormwater runoff.

While the NOIRA has been constructed broadly to allow the TAC to consider a number of issues, we do not intend for this action to be a major revision. This is predicated on a number of points.

- 1) The fact remains that updating this General Permit to incorporate the work of the other stormwater TAC (particularly that related to the new water quality and quantity criteria) will be a two step process as this permit needs to be in place by July 1, 2009 and the other body of regulations (Parts II, III, and XIII) will not be final until after that time. As such, issues associated with that action will not for the most part be able to be addressed in a Construction General Permit until later.
- 2) EPA is in the process of developing a national regulation (called an Effluent Limitations Guideline) for the construction and development industry. Upon completion of the Effluent Guideline, the EPA will develop and issue an updated Construction General Permit that incorporates the provisions of the Effluent Guideline by July 2010.

Once finalized, NPDES permitting authorities (including EPA and 45 authorized states) will be required to incorporate the provisions of this Effluent Guideline in their Construction General Permits when they are next reissued. (NPDES permits are typically issued for five-year periods, which is the maximum allowed by law).

- 3) The EPA's Bay TMDL is due out by May 2011 although Bay partner states have indicated their desire to have it prepared by the end of 2010.

American Canoe Association, Inc. and the American Littoral Society v. EPA and EPA - Region III, No. 98-979-A.

In this case (filed July 9, 1998), plaintiffs and EPA signed a consent decree which the district court entered on June 11, 1999. The consent decree sets out a 11-year schedule for establishment of TMDLs for all water quality limited segments (WQLS) on Virginia's 1998 Section 303(d) list as amended by EPA on May 10, 1999, including certain waters which may be included on

Virginia's next Section 303(d) list. The decree provides that EPA will ensure the TMDLs are established if Virginia does not establish the TMDLs.

- 4) DEQ may develop water quality standards for pollutants (such as sediment) that might be found in construction site runoff.

### **Materials in TAC Packets**

- 1) Agenda
- 2) TAC Member List
- 3) NOIRA
- 4) Virginia Stormwater Management Act
- 5) Virginia Stormwater Management Program (VSMP) Permit Regulations
- 6) Stormwater Part I and XIV draft Construction General Permit regulations
- 7) Copies of comments received during the NOIRA
- 8) Copies of comments received during phone interviews by facilitator
- 9) Committee charge and regulatory process discussion document

### **DCR Website**

Policy, Regulations and Public Comment Section

<http://www.dcr.virginia.gov/lawregs.shtml>

(minutes, agendas, presentations, handouts)

**Stormwater Management Regulations Technical Advisory Committee (TAC)**  
**Agenda** **July 22, 2008**

1. Welcome and Opening Remarks
2. Presentation of Agenda and Delegation of Charge to TAC
3. Introduction of the Facilitator
4. TAC Member Self-introduction and Expectations
5. Ground Rules/ Guidelines for Discussion
6. Regulatory Process and Timeline Overview
7. Review of the Notice of Intended Regulatory Action (NOIRA)
8. National Pollution Discharge Elimination System (NPDES) Construction General Permit Program and Regulation Overview
9. Review and Discussion of Draft Regulations [Part XIV]
10. Next Steps
11. Close and Plans for Next Meetings:
  - August 19<sup>th</sup> Patrick Henry Building
  - September 9<sup>th</sup> Patrick Henry Building (May move to Pocohonatas Bldg.)
  - September 24<sup>th</sup> (canceled)

Virginia Soil and Water Conservation Board – September 24<sup>th</sup> and 25<sup>th</sup>

**Introduction of Department of Conservation and Recreation TAC Support and Logistics Staff**

David Dowling – Policy, Planning and Budget Director  
Michael Fletcher – Board and Constituent Services Liaison  
Ryan Brown – Policy and Planning Assistant Director  
Christine Watlington – Policy, Planning and Budget Analyst  
Doug Fritz – MS4 Program Manager  
Holly Sepety – Stormwater Compliance Specialist

Elizabeth Andrews - Assistant Attorney General

## **Introduction of the Facilitator**

**E. Franklin Dukes**

## **WORK EXPERIENCE**

2000 –present **Director**, Institute for Environmental Negotiation (IEN), University of Virginia

1996 - 2000 **Associate Director**, Institute for Environmental Negotiation, University of Virginia

1991 – 1996 **Senior Associate**, Institute for Environmental Negotiation

1984 – 1991 **Independent Conflict Resolution Consultant**

1989 – 1990 **Adjunct Faculty**, graduate program, Institute for Conflict Analysis & Resolution, George Mason University

1975 – 1988 **Piano Craftsman**. Developed small business specializing in the restoration of fine pianos.

## **EDUCATION**

Ph.D., 1992, Conflict Analysis and Resolution, George Mason University

M.S., 1988, Conflict Management, George Mason University

B.A., 1975, Music, University of Virginia.

International Affairs Major, United States Air Force Academy, 1969-1971.

Author of *Reaching for Higher Ground in Conflict Resolution and Resolving Public Conflict*, Dr. Dukes is an experienced facilitator, trainer, and mediator. He brings a strong understanding of local government and community involvement, and has worked with numerous communities on a wide range of issues including water supply, school districting, facility siting, and management of park land. He has facilitated ground-breaking efforts in consensus building between the tobacco farmer and public health communities, and is now involved in facilitating community remediation and redevelopment of contaminated sites in different states. He teaches courses in collaborative planning and other topics at UVA.

## **Regulatory Process**

The Construction General Permit is a regulation of the Virginia Soil and Water Conservation Board.

This is the first amendment to this permit since the EPA approved the transfer of program administration authority from the State Water Control Board (DEQ) to the Virginia Soil and Water Conservation Board (DCR) effective January of 2005.

On June 30, 2009 the current Construction General Permit expires (became effective July 1, 2004).

On March 20, 2008, the Board gave DCR authority to initiate a regulatory action to amend the Construction General Permit.

Regulatory actions are comprised of three primary steps: the Notice of Intended Regulatory Action, the Proposed Regulations, and the Final Regulations.

Routinely under the Administrative Process Act (APA) this takes about 2 years.

Amendments to this General Permit are exempt from the full APA (§2.2-4006 subsection A9 of the Code of Virginia).

An abbreviated APA-like process is still required (Public input remains, Administrative review is reduced).

The General Permit shall be exempt from the APA if the Board:

- Provides a Notice of Intended Regulatory Action (NOIRA),
- Forms a technical advisory committee composed of relevant stakeholders to assist in the development of the General Permit,
- Provides notice in the Virginia Register of Regulations and receives oral and written comment,
- Conducts at least one public hearing on the proposed General Permit.
- Publishes in the Register both the proposed and final regulations.
- At least two days in advance of the Board meeting where the regulation will be considered, a copy of the regulation shall be provided to members of the public that request a copy.
- A copy of that regulation shall be made available to the public attending the Board meeting.



DCR will need to follow federal processes associated with general permit development such as newspaper noticing.

The EPA will also require review of the proposed and final General Permit regulations.

### **Proposed Timeline**

On March 20, 2008, the Board gave DCR authority to initiate a regulatory action.

On March 24, 2008, the NOIRA was posted to the Regulatory TownHall and filed with the Registrar of Regulations.

The 30-day public comment period opened on April 14, 2008 and closed on May 14, 2008.

TAC has been developed and the Institute of Environmental Negotiation has been selected to provide facilitation services. (Frank Dukes)

First meeting – July 22<sup>nd</sup>

Second Meeting – August 19<sup>th</sup>

Third Meeting – September 9<sup>th</sup>

We will post information from each meeting on the Policy, Regulations and Public Comments portion of DCR's website at: <http://www.dcr.virginia.gov/lawregs.shtml>

Proposed regulations to the Board on September 24<sup>th</sup> or 25<sup>th</sup>. (File by October 8, 2008 with the Registrar; Publish on October 27, 2008 in the Register)

60-day public comment period - October 27, 2008 through December 26, 2008.

[EPA will also review during this time period]

[We also have newspaper publishing requirements (federal) during this time period]

Final unofficial and official drafts of the final regulation to the EPA (Feb./March)

Final regulation to the Board - March 19, 2009.

File on the TownHall and with Registrar by April 8, 2008; Printed in the Virginia Register of Regulations on April 27, 2008.

30-day public comment period ends and regulations are final on May 27, 2009 with an effective date of July 1, 2009.